

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-3845**

**November 13, 2003**

**R E S O L U T I O N**

Resolution E-3845. Pacific Gas and Electric Company (PG&E) requests approval of its Gas Supply Plan for the period of October 1, 2003 through March 31, 2004. The Gas Supply Plan documents the utility's strategy to implement the gas tolling provisions of certain California Department of Water Resources (DWR) contracts it has been assigned to administer. PG&E's request is approved with modifications.

By Advice Letter (AL) 2410-E filed August 15, 2003.

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**SUMMARY**

PG&E's Gas Supply Plan 2 is approved with modifications for the period commencing with the effective date of this resolution and through March 31, 2004, or until the utility's next Gas Supply Plan is approved. This Gas Supply Plan supercedes PG&E's plan filed in AL 2359-E and approved in Resolution E-3825.

PG&E is required to file a supplemental advice letter to reflect that the purpose of the gas storage proposal the utility was directed to prepare is consistent with the objectives expressed in Resolution E-3825. The utility is also ordered to issue its solicitation for bids concerning its storage proposal (Requests For Offer or RFO) according to the guidelines prescribed in this resolution. Further consideration of PG&E's gas storage proposal will be undertaken when responses from the RFO are provided to the Commission. Adoption of PG&E's gas storage proposal is subject to Commission approval.

PG&E is directed to file its next Gas Supply Plan for the period beginning April 1, 2004 through September 30, 2004 by February 1, 2004. The utility is instructed to provide a draft of this plan to its Procurement Review Group (PRG) (instructions are provided in the resolution in the event that its PRG is disbanded) and DWR no later than 2 weeks prior to the filing deadline. Review

of the utility's next and future Gas Supply Plans will be subject to the review process adopted in this resolution.

All text that appears shaded in the confidential version of this resolution and redacted in the public version of this resolution will be divulged upon Commission approval of this resolution.

## **BACKGROUND**

On October 25, 2001, the Commission opened Rulemaking (R.) 01-10-024 to establish mechanisms enabling PG&E and the state's other major electric utilities to resume purchasing electricity to meet their customers' needs.<sup>1</sup> The utilities were unable to procure electricity due to their financial situation and the market disruptions arising from the energy crisis. As a result, DWR was authorized to contract for electricity supplies on behalf of the customers of PG&E, Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E), hereafter referred to collectively as the "utilities". The rulemaking was necessary because DWR's statutory authority to buy electricity was set to expire December 31, 2002. Following is a discussion of various decisions issued in this rulemaking proceeding related to the subject of this resolution.

In Decision (D.) 02-09-053, the Commission allocated the long-term DWR power purchase contracts to the resource portfolios of the utilities. As of January 1, 2003, the utilities would be obligated to schedule and dispatch the contracts while DWR retains legal and financial responsibilities. The utilities were also instructed to integrate the DWR contracts with their existing supply portfolios and new procurement contracts and to manage these resources under the operating rule of least-cost dispatch.

The Commission also considered the utilities' administration of the DWR contracts containing "gas tolling" provisions. These provisions provide DWR with the option to either (i) accept the generator's price for gas used in electricity production or (ii) procure gas supplies on its own initiative. Since proper management of the gas tolling arrangements is a critical aspect of least cost

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<sup>1</sup> In R.01-10-024, the Commission also will consider the treatment of renewable resources pursuant to Public Utilities Code section 701.3.

dispatch, the Commission determined that the utility's operational and administrative responsibilities of the DWR contracts should apply to the implementation of the gas tolling provisions with DWR holding all related financial and legal responsibilities.

In D. 02-10-062, the Commission established the regulatory framework enabling the utilities to resume full procurement on January 1, 2003 consistent with their obligation to serve. Minimum standards of conduct were adopted governing the behavior of utility employees and outlining acceptable procurement practices. Such standards included a prohibition against self-dealing to the benefit of an affiliate of the utility and the requirement for the utilities to prudently administer all contracts and dispatch energy in a least-cost manner. The decision ordered the utilities to file updated procurement plans reflecting the allocated amounts of DWR power resulting from D.02-09-053 and to expand on risk management strategies.

In D. 02-12-069, the Commission adopted an Operating Order memorializing the obligations that DWR and the utilities would assume beginning January 1, 2003 for the administration of the allocated DWR long term power contracts. The decision also established up-front standards of review governing the utilities' administration of the DWR contracts and adopted the standards previously set forth in D. 02-10-062.<sup>2 3</sup> The decision also recognized that the utilities and DWR could continue to negotiate a mutually acceptable Operating Agreement which would replace the Operating Order (PG&E's Operating Agreement was adopted by the Commission in D. 03-04-029, further described below).

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<sup>2</sup> D. 02-12-069, " We adopt the standards previously adopted in D.02-10-062 with the explicit inclusion of a "least-cost" dispatch requirement." (see p. 61, *mimeo*) Additionally, the decision adopted the following up-front standards of conduct:

"1. The utilities shall prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner. Our definitions of prudent contract management and least cost dispatch are the same as our existing standard.

2. The utilities shall not engage in fraud, abuse, negligence, or gross incompetence in negotiating procurement transactions or administering contracts and generation resources." (D.02-12-069, Ordering Paragraph 4)

<sup>3</sup> D. 02-12-074, granted in-part PG&E's petition to modify several standards of behavior.

Among the sections in the Operating Order is “Exhibit B, Fuel Management Protocols” specifying the operating relationship between DWR and the utilities concerning management of the gas tolling provisions included in certain DWR contracts. Under the exhibit, the utilities, acting as a limited agent for DWR, are charged with conducting the administrative and operational aspects of the gas tolling provisions while DWR holds legal and financial responsibility. The utilities were also required to prepare “Gas Supply Plans” documenting their strategies implementing the gas tolling provisions, to be filed on a semi-annual basis.

As D.02-12-069 explains, the Gas Supply Plans serve the following purpose:

“The utilities are responsible for preparing “Gas Supply Plans “detailing their strategies for procuring gas and proposed use of risk management instruments. These plans will set parameters under which the utilities will perform various gas-related activities pursuant to the gas tolling provisions. The utilities shall file these plans for Commission approval through Advice Letter filings on a semi-annual basis. The Commission will review and approve these plans on an expedited basis. Following approval of the Gas Supply Plans, the utilities will negotiate with suppliers for gas supplies, transportation and storage. Negotiated agreements will then be submitted to DWR for execution.” (D. 02-12-069, p. 27, *mimeo*)

Furthermore,

“In particular, with respect to gas purchasing, transportation, storage and risk management, we believe DWR should limit its involvement to the review of the utility’s Gas Supply Plans and that, following Commission approval of these plans, the utilities should be free to negotiate and present agreements for DWR execution without subsequent DWR approval.” (D. 02-12-069, p. 28, *mimeo*)

In D. 02-12-074, the Commission approved the updated short-term procurement plans filed in response to D.02-10-062 for each utility. The procurement plans provide the up-front standards by which the utilities will procure electricity to meet customer needs during 2003. PG&E’s approved procurement plan

included a description of its methods for managing its generation portfolio (e.g., retained generation, contracts with Qualifying Facilities (QFs), existing bilaterals, and the allocated DWR contracts) pursuant to least cost principles.<sup>4</sup> Among the operating practices approved in PG&E's short term procurement plan is the goal of managing the total open market position (proportion of energy sales or fuel costs subject to price fluctuations) of its generation portfolio below a certain threshold (referred to as "consumer risk tolerance"), which may involve hedging gas volumes associated with the DWR contracts. This decision also granted in part a petition to modify several of the standards of behavior adopted in D. 02-10-062. On May 15, 2003, PG&E filed its short-term procurement plan for 2004.

In D. 03-04-029, the Commission approved Operating Agreements between DWR and PG&E and SDG&E, respectively.<sup>5</sup> Thus, PG&E's Operating Agreement supercedes the Operating Order and governs the utility's administration of the DWR contracts. The Operating Agreement and Operating Order are similar in most respects with PG&E continuing to conduct its administrative and operational activities as a limited agent of DWR with DWR holding legal and financial responsibility over the contracts. A principle change is that DWR is provided with additional discretion over the utility's gas procurement activities. As summarized in D.03-04-029, DWR's expanded role is as follows:

"Notwithstanding our policy preference that DWR be allowed to end its involvement in gas purchasing, we will approve the provisions requiring DWR to participate in the fuel management activities as contemplated by the Agreements. ... The revisions allow DWR to provide the utilities with additional up-front information regarding contract limits, and approved suppliers, which the utilities will then incorporate into their Gas Supply Plans and gas procurement activities. ( D. 03-04-029, p. 22 *mimeo*)

In addition to this change, DWR was authorized to approve PG&E's Gas Supply Plans (referred as "Utility Gas Supply Plan" in the Operating Agreement) and

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<sup>4</sup> PG&E's procurement plan is titled, "Generation Procurement Plan Testimony Responding to Decision 02-10-062", filed November 12, 2003 in R.01-10-024.

<sup>5</sup> PG&E submitted an executed copy of its Operating Agreement with DWR in AL 2374-E, effective April 17, 2003 per Commission letter to PG&E Director of Regulatory Relations dated May 12, 2003.

instructed to formally notify the Commission when it has done so. As specified in the decision, conflicts arising from this approval process are to be resolved in the following fashion:

“....., however, in the event that DWR only authorizes a subset of what the Commission has approved, the utilities must operate within the limitations of DWR’s approval. Similarly, if the Commission rejects portions of the Gas Supply Plans the DWR would otherwise authorize, we expect the utilities to operate within the limitations of the Commission’s decisions. (D.03-04-029, p. 24, *mimeo*)

On July 10, 2003, the Commission adopted Resolution E-3825, approving PG&E’s first Gas Supply Plan with modifications.<sup>6</sup> The approved plan is to remain in effect from March 25, 2003 until the utility’s next Gas Supply Plan is adopted by the Commission. The resolution also stipulated that the utility was to provide several items in its next Gas Supply Plan filing including a proposed plan for obtaining gas storage capacity as of April 1, 2004 and provide minimum storage targets for May 31, 2004 (see Ordering Paragraph 12 of Resolution E-3825).

On August 15, 2003, PG&E filed AL 2410-E with its proposed Gas Supply Plan for the period of October 1, 2003 through March 31, 2004 (designated by the utility as Gas Supply Plan 2).<sup>7 8</sup> The plan notes that the utility submitted a draft to its PRG and DWR prior to filing.<sup>9</sup> A majority of the comments received from

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<sup>6</sup> PG&E filed its initial Gas Supply Plan in AL 2359-E on March 25, 2003.

<sup>7</sup> PG&E AL 2410-E includes four confidential attachments submitted under CPU Code Section 583 and Pursuant to May 1, 2002 Protective Order and one non-confidential attachment. Confidential Attachment A contains Gas Supply Plan 2. Confidential Attachment B contains Generator Fuel Plan Pricing Mechanisms. Confidential Attachment C contains sample calculations. Confidential Attachment D contains DWR fuels protocols. Non-confidential Attachment E contains pipeline and storage tariffs. A redacted version of PG&E AL 2410-E was submitted via e-mail August 15, 2003.

<sup>8</sup> On August 28, 2003, PG&E circulated a revision to page 28 of its Gas Supply Plan filed in AL 2410-E correcting a misstatement.

<sup>9</sup> D. 02-08-071 established “Procurement Review Groups”, whose members are Commission Energy Division staff, ORA, The Utility Reform Network, California Energy Commission and other non-market participants as defined in the May 1, 2002 PUC Protective Order and who agree to execute an appropriate non-disclosure agreement. It is

*Footnote continued on next page*

DWR were said by the utility to be incorporated in the filed version. In general, PG&E's second Gas Supply Plan follows the format used by the utility in its initial plan and includes sections describing strategies involving gas procurement, use of pipeline and storage capacity, and risk management tools as well as other topics. According to an analysis conducted by PG&E, the utility says in the plan that it is more cost effective for it to supply gas for all contracts with gas tolling provisions.

## **NOTICE**

Notice of AL 2410-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

## **PROTESTS**

PG&E AL 2410-E was not protested.

## **DISCUSSION**

Under review is PG&E's second Gas Supply Plan describing how the utility will undertake its duties related to its administration of the DWR contracts with gas tolling provisions from October 1, 2003 through March 31, 2004. Our focus here is on the extent that the utility's plan conforms to our decisions and that its strategies support our procurement goals and objectives. Consideration of the effectiveness of the utility's actions pursued under the Gas Supply Plans will be conducted in our review of the utility's administration of the DWR contracts.<sup>10</sup> This approach is consistent with our evaluation of PG&E's first Gas Supply Plan in Resolution E-3825. We will observe the procedure set forth in D. 03-04-029 resolving conflicts between DWR and Commission regarding approval of the Gas Supply Plan.<sup>11</sup>

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intended to act in a consultative fashion regarding utility procurement activities and plans, and has not been given authorizing capability. (see p. 24, *mimeo*)

<sup>10</sup> D. 03-06-067, states that this review will be conducted annually in conjunction with DWR contract administration and least-cost dispatch. (see p. 10, *mimeo*)

<sup>11</sup> D. 03-04-029, p. 24, *mimeo* and PG&E Exhibit B, Section IV.

Elements in conformity with Operating Agreement and procurement strategies:

In accordance with its Operating Agreement, PG&E's Gas Supply Plan 2 shows that the utility will conduct its gas tolling related activities as a limited agent of DWR. The plan indicates that the utility will take on the administrative and operational responsibilities necessary to fulfill its procurement obligations. Such activities PG&E says it will conduct include: (1) procedures for obtaining gas supplies;<sup>12</sup> (2) consideration of the use of pipeline and storage capacity; (3) invoice review and approval procedures, and (4) management of gas imbalances. We find that the plan indicates that PG&E will be able to procure and supply gas pursuant to the gas tolling provisions in a manner consistent with its Operating Agreement.

With regard to PG&E's strategies to administer the gas tolling contracts, the utility's plan describes tactics similar to those contained in the utility's initial Gas Supply Plan we approved. In the case of gas commodity purchases, the utility seeks to build a cost effective portfolio and to secure supplies in a manner consistent with its intended dispatch patterns. Decisions related to the acquisition of pipeline and storage capacity will be conducted according to market conditions. Risk management strategies are intended to support the utility's electric procurement plans concerning consumer risk tolerance levels. We note that the gas storage analysis provided in the plan is based on the Wild Goose contract with DWR, the utility should also consider the use of storage with other providers as well in their analysis for obtaining storage for the period. We stress that actions taken pursuant to the Gas Supply Plan are required to meet all standards in the utility's adopted electric procurement plan. In sum, these strategies appear to support the Commission's procurement objectives directing the utility to dispatch the DWR contracts in a least-cost manner.

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<sup>12</sup> Although not explicitly stated in Gas Supply Plan 2, we remind PG&E of the requirement in the Operating Agreement to submit gas contracts in excess of 3 months or with a total value over \$10 million to DWR for advance approval and execution (see PG&E Operating Agreement, Exhibit B, Part V.)

PG&E's Gas Supply Plan 2 also discusses the utility's selection to assume the role of Fuel Supplier or Fuel Manager.<sup>13</sup> In Resolution E-3825 we directed PG&E to become Fuel Manager for the CalPeak contract because the utility could act in that capacity strictly for DWR contract related gas volumes. On this point, PG&E notes that it will accept this function subject to the provisions of the CalPeak contract and to the extent that DWR is willing to make such an election. We find PG&E's explanation of its attempt to become the Fuel Manager for the CalPeak contract and its decisions related to the other contracts appropriate. We emphasize that the utility should only assume this duty for gas volumes associated with dispatching the DWR contracts it is allocated.

PG&E also states in its Gas Supply Plan 2 that it intends to hedge the majority of the forecasted gas volumes required to meet anticipated current obligations (defined in the plan as including generation to support forecasted native loads and contracted forward power sales) for the fourth quarter of 2003 and first quarter of 2004. The reason provided for this hedging is due to recent and expected market volatility. PG&E notes that this winter hedging strategy was presented to its PRG and received a positive response.<sup>14 15</sup> We, therefore, will allow PG&E's hedging plan to go forward.

In addition to the descriptions of the activities PG&E intends to undertake, the utility included in its Gas Supply Plan a document titled "Draft California Department of Water Resources DWR Fuels Protocols." Commenting on the unfinished status of this document, PG&E noted that the Fuels Protocols are an ongoing topic of discussion between the utility and DWR. We decline to comment on the DWR Fuels Protocols since a finalized version was not provided.

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<sup>13</sup> According to PG&E's Gas Supply Plan 2, the Fuel Supplier purchases gas and delivers it to the Fuel Manager at the PG&E Citygate or a pre-determined location and the Fuel Manager receives gas from the Fuel Supplier and manages daily and monthly deliveries from the Citygate (or other point) to the plant.

<sup>14</sup> Resolution E-3825 noted that we expected the utility to consider or to have already taken steps to hedge gas in advance of the upcoming winter and to consult with its PRG if any guidance was needed in this regard. (Res. E-3825, p. 22)

<sup>15</sup> PG&E Gas Supply Plan 2, p. 5.

Response to Resolution E-3825:

Resolution E-3825, adopting the utility's initial Gas Supply Plan, directed the utility to include or address several items in its next Gas Supply Plan (under review in this resolution). These items are: 1) a proposed gas storage proposal for the summer of 2004 and gas storage target level; 2) a proposal showing how used pipeline and storage capacity can be made available to other utilities or brokered; 3) descriptions concerning modeling and analyses; and 4) inclusion of a presumption of reasonableness standard used in connection with utility-owned services. We now examine whether PG&E complied with our directive.

1. Gas Storage and target level proposal.

Resolution E-3825 instructed PG&E to present a proposal to secure firm gas storage capacity for the period of April 1, 2004 through March 31, 2005. Additionally, the utility was directed to submit a target amount of gas held in storage for May 31, 2004.

In response to our order, PG&E proposes the following storage plan:

PG&E Gas Supply Plan 2 Storage Proposal			
Function	Capacity	Demand Rate	Commodity Rate
Inventory	1,000,000 Dth	tbd/Dth	n/a
Injection	34,100 Dth/day	tdb/Dth/mo.	tdb/Dth
Withdrawal	34,100 Dth/day	tdb/Dth/mo.	tdb/Dth
Minimum storage target inventory for May 31, 2004 = 300,000 Dth			
Dth = decatherm			

PG&E explains that the purpose of the storage is primarily for daily and monthly balancing and for price and supply security in winter. The injection and withdrawal capacities were selected to match the pipeline capacity available to DWR under their contract with PPM Energy and the plan noted that additional withdrawal capacity could be obtained if necessary. The minimum target storage level is intended to provide PG&E with the flexibility to inject and withdraw gas to meet peaking loads, which the utility says is particularly important for intra-day gas dispatch.

To pursue its proposal, PG&E says it will issue a Request For Offers (RFO) to all storage providers in California by February 1, 2004. Bids will be evaluated on the lowest cost to DWR. The utility will review the results of the RFO with DWR

and its PRG prior to making a recommendation to DWR. As stated in the plan, if awarded by DWR, the contract will be presented to DWR for execution.

Our primary reason directing PG&E and the other utilities to develop a proposed storage plan was our concern about the adequacy of supply and need for price protection during the summer of 2004. As expressed in Resolution E-3825, "We believe that storage should be considered for use by the state's electric utilities as a hedge against high natural gas prices, particularly during the summer."<sup>16</sup> Furthermore, we indicated that maintaining adequate gas supplies on hand can benefit all gas consumers by moderating gas prices statewide.

In consideration of our objectives, we note that PG&E's proposal does not speak directly to the purpose we expressed for the use of this storage. While we do not object to PG&E's intended uses such as balancing and winter price protection, we find that PG&E's plan should provide for the possibility of utilizing the storage, if ultimately obtained, for hedging during the 2004 summer. Accordingly, we will direct PG&E to modify its proposed gas storage plan to indicate that the utility will be prepared to utilize this storage for reliability and price protection during the summer as well as the winter.

With regard to the details of PG&E's gas storage proposal, we note that the quantities of inventory and target levels represent relatively significant amounts. According to forecasted gas usage figures provided to Energy Division (ED), the proposed gas inventory capacity levels range between 25 to 50 per cent of expected monthly gas usage during the 2004 summer months of June through September and the May 31, 2004 target level of gas in storage represents 15 per cent of expected usage for the month of June 2004. We find that the level of storage inventory, injection/withdrawal quantities, and gas target level the utility seeks to obtain appear reasonable, however, we are not pre-approving PG&E's storage proposal. At this time, we decline to completely endorse the utility's proposal until we have an opportunity to review the results to the RFO.

To ensure that the RFO produces results truly reflecting market conditions and is conducted in a fair manner, we will institute several guidelines that PG&E is required to observe. First, the RFO shall be structured by PG&E to ensure that

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<sup>16</sup> Resolution E-3825, p. 18.

all in-state storage providers have sufficient time to prepare suitable responses to the storage proposal, in no event less than 21 days. Second, we are concerned about the potential that PG&E may gain a competitive advantage from administering the RFO process since the utility is also a storage service provider. As such, we will require that the Electric Fuels Management group (EFM) manage the RFO process and hold all bids received in strict confidence until presented to its PRG, DWR and the Director of the Commission's Energy Division.<sup>17</sup> In connection with this requirement, we stress that EFM personnel are prohibited from sharing the results of the RFO with any individuals outside this organization including PG&E personnel which may be responsible for preparing a bid for the utility. Third, PG&E shall inform prospective bidders that bids received in response to the RFO will be binding. We also request that PG&E provide the proposed gas storage proposal package to its PRG. We will further consider PG&E's storage proposal when the results of the RFO are provided to its PRG, Commission and DWR and the utility shall also provide its recommendation concerning awarding a contract.<sup>18</sup> Adoption of PG&E's gas storage proposal is subject to Commission approval, whereupon the appropriate contract(s) will be provided to DWR for execution, and will require that the Gas Supply Plan so indicate.<sup>19</sup>

2. Use of unused pipeline and storage capacity with other utilities and brokering.

Resolution E-3825 instructed PG&E to include a proposal in its next Gas Supply Plan showing how to make available unused pipeline and storage capacity it may have obtained to the other utilities in connection with their DWR related duties or brokered.

In response, PG&E suggests that such a proposal is better suited for DWR's Fuels Protocols because it would involve the other utilities as well as DWR. We agree

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<sup>17</sup> As described in the Gas Supply Plan, the Electric Fuels Management Group was established to manage the fuel supply function and is composed of three and a half full time employees - a manager, strategist, trader and scheduler.

<sup>18</sup> In the event that PG&E's PRG is disbanded before the results of the RFO are received, the utility shall provide the results of the RFO to Energy Division staff, DWR, ORA and any other parties the utility believes is appropriate.

<sup>19</sup> Commission approval for the gas storage proposal may be in the form of a letter issued by the Commission's Energy Division.

with PG&E's premise that coordination with the other utilities is necessary to implement such a proposal and, thus, find the utility's response to this issue satisfactory. We will expect PG&E to actively pursue these matters in the course of their discussions with DWR concerning the Fuels Protocols or other appropriate forum. In the event that a procedure has been found mutually acceptable, PG&E should include it in the appropriate Gas Supply Plan for our review and approval.

### 3. Inclusion of descriptive and analytical information.

Resolution E-3825 instructed PG&E to provide greater information describing the models and analytical techniques it would use to make decisions under the Gas Supply Plan and to define the use of any non-standard terms.

In response, PG&E expanded upon the amount of information and level of detail it provided in comparison to its first Gas Supply Plan. For example, the utility provided an analysis it used to determine whether pipeline or storage capacity should be obtained. Additionally, the plan describes how certain computer models will be used. Although we are encouraged by PG&E's efforts to furnish more descriptive information, we believe that the utility can continue to provide more specificity in future Gas Supply Plans. As such, we will direct PG&E to incorporate greater detail in future Gas Supply Plans. In particular, we will require the utility to provide a thorough discussion in its next Gas Supply Plan about the analytical tools it uses to assess future gas price volatility in the course of making risk management decisions.

### 4. Presumption of reasonableness standard.

Resolution E-3825 instructed PG&E to include the presumption of reasonableness standard adopted in Ordering Paragraph 3 of the resolution for its second Gas Supply Plan. The purpose of this standard is to provide an indication that transactions involving utility-owned services were procured at a reasonable price.

Our reason for directing PG&E to include the presumption of reasonableness standard in its plan was to provide parties with an opportunity to offer opinions on the validity and use of the standard. We note that PG&E included the standard in its second Gas Supply Plan and that no parties commented on it. Accordingly, we will continue the use of this standard unless a more appropriate

measure is derived. In connection with this standard, we will require that the utility justify its decisions whether to obtain utility provided services at the recourse tariff rate or at a negotiated price and was in support of our least-cost dispatch standard. Such justification shall be made available to staff upon request.

Negotiations between DWR and PPM Energy:

In Gas Supply Plan 2, PG&E notes that the availability of the pipeline capacity associated with the PPM Energy contract is subject to negotiations.<sup>20</sup> Savings the utility calculated supporting its decision to supply gas under the contract is predicated upon the use of this capacity. Furthermore, the utility tailored the injection/withdrawal quantities associated with its gas storage proposal according to the PPM Energy contract pipeline capacities. PG&E shall notify its PRG and DWR upon determining that finalized negotiations, as reported by DWR to the utility, involving the PPM Energy contract may or will materially impact Gas Supply Plan 2.<sup>21</sup>

Future Gas Supply Plan review procedures:

Without compromising due process or the integrity of our review, we find that in certain circumstances the need for a resolution addressing the utility's Gas Supply Plan is unnecessary. Adopting the more efficient review process described below is appropriate since we have gained more familiarity with the substance and nature of the utility's plans. The new procedure is similar to our method of processing the majority of routine advice letters submitted by electric and gas utilities. To ensure that the public has ample opportunity to comment on future Gas Supply Plan filings, we will maintain the normal 20 day protest period for advice letters set forth in General Order 96-A.

In the future, PG&E's Gas Supply Plan filings will be allowed to go into effect without a Commission resolution under these conditions:

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<sup>20</sup> PG&E Gas Supply Plan 2, p. 13, footnote 6.

<sup>21</sup> In the event that its PRG is disbanded, PG&E shall notify Energy Division staff, DWR, ORA and any other party the utility believes is appropriate concerning the impact of the PPM Energy contract.

- 1) the Gas Supply Plan is not protested and is found to be acceptable by the ED;
- 2) the Gas Supply Plan acceptable to ED is protested, but the protest is deemed by ED to be frivolous; or
- 3) the utility amends the Gas Supply Plan via a supplemental advice letter (which is not subsequently protested) to comport to changes suggested by ED or in response to a substantive protest found by ED to be acceptable.

For these cases, a letter will be prepared by ED and sent to the utility and DWR signifying that the Gas Supply Plan is approved. The Energy Division will advise the Commission of its analysis of future gas supply plans before they are approved. A resolution processing the Gas Supply Plan will be required in all other situations not described above.

Future Gas Supply Plan filings:

PG&E's next Gas Supply Plan shall be filed no later than February 1, 2004 to cover the period beginning April 1, 2004 through September 30, 2004. The advice letter is to be served on all parties to R. 01-10-024 with the 20 day comment period prescribed in General Order 96-A. To reduce the potential for protests, we recommend that the utility provide a draft of the plan to its PRG and DWR for review at least two weeks prior to this filing deadline.<sup>22</sup> In the event that a resolution is not issued in connection with future Gas Supply Plan filings, ED will issue a letter informing the utility when subsequent Gas Supply Plans are to be filed and related instructions. PG&E is required to observe the direction provided by ED in any such notice.

**COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment

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<sup>22</sup> In the event its PRG is disbanded, PG&E will serve a draft of its next Gas Supply Plan to Energy Division staff, DWR, ORA and any other party the utility believes is appropriate.

prior to a vote of the Commission. Section 311(g)(3) provides that this 30-day period may be reduced/waived by Commission adopted rule.

The 30-day comment period was- reduced to ensure that PG&E's Gas Supply Plan goes into effect in a timely manner consistent with the public interest.

Comments were filed by PG&E on November 6, 2003. DWR filed reply comments on November 10, 2003.

PG&E comments.

PG&E addresses the following issues raised in the draft resolution. We will examine each point the utility discusses and provide our response.

Issue 1: Gas storage proposal.

PG&E states that it will not make the final decision regarding the storage proposal since DWR is responsible for executing contracts with suppliers. PG&E claims that DWR will make the final decision whether to accept or approve the contracts resulting from the RFO. The utility also discounts the need for Commission approval of the storage proposal since DWR is purported to have the ultimate say over its implementation and that any delay resulting from further regulatory review may jeopardize the successful completion of the RFO. As a general principle, the utility says that it does not have the unilateral right to execute proposed gas supply contracts because DWR holds the legal and financial obligations associated with the allocated contracts. With regard to the purpose of the storage, PG&E agrees to amend its Gas Supply Plan to indicate that any storage capacity obtained could be used for supply reliability and price protection during the 2004 summer.

Response:

PG&E's discussion concerning its role and that of DWR and the Commission in connection with the gas storage proposal touches upon the purpose of the Gas Supply Plans. To clarify each parties' responsibilities in carrying out the gas storage proposal, we look to the those decisions establishing the Gas Supply Plan requirement.

In D. 02-12-069, adopting the Operating Order, we said;

“..., with respect to gas purchasing, transportation, storage and risk management, we believe DWR should limit its involvement to the review of the utility’s Gas Supply Plans and that, following Commission approval of these plans, the utilities should be free to negotiate and present agreements for DWR execution without subsequent DWR approval.” (D. 02-12-069, pp. 27-8, mimeo)

Finding of Fact 9 in D. 02-12-069 states:

“9. Following DWR review of a Gas Supply plan, the utilities should not need to obtain DWR approval for agreements entered into consistent with the plan.”

In D. 03-04-029, adopting the Operating Agreement, while providing DWR with the authority to approve the utilities’ Gas Supply Plans, we said;

“Notwithstanding our policy preference that DWR be allowed to end its involvement in gas purchasing, we will approve the provisions requiring DWR to participate in the fuel management activities as contemplated by the Agreements. We recognize that under the current situation, DWR retains financial and legal responsibility for the contracts, including the right to implement the gas tolling provisions of the contracts. The revisions allow DWR to provide the utilities with additional up-front information regarding contract limits, and approved suppliers, which the utilities will then incorporate into their Gas Supply Plans and gas procurement activities. We view these requirements as relatively minor clarifications designed to streamline the utilities’ gas purchasing activities and increase the likelihood that DWR will sign gas contracts presented to it in a timely manner.” (D. 03-04-029, p. 22, mimeo)

Under Exhibit B, Section VIII. “Storage Capacity, Injections and Withdrawals” of PG&E’s Operating Agreement adopted in D. 03-04-029, it states;

“Following approval of the Utility Gas Supply Plans, Utility shall negotiate firm and/or interruptible agreements with such storage service providers and submit them to DWR for execution. While DWR will be the executing party with DWR remaining the principal under such contracts, such agreements with storage service providers shall specifically authorize Utility to act for an on behalf of DWR in nominating gas injections and

withdrawals under such agreements; provided, however, on the earliest practicable date after the execution of the Agreement, DWR agrees to provide to Utility in writing and in advance of such negotiations any limits, including without limitation any terms, that may be required by DWR.”

It is apparent from our pronouncements in these decisions and by the Operating Agreement that PG&E is responsible to arrange for the terms for storage and other activities and submit any resulting agreements to DWR for execution. As such, PG&E’s decision making responsibility includes determining whether the services it negotiated are consistent with its approved Gas Supply Plan as well as other relevant Commission policies and that a contract should then be tendered to DWR. With financial and legal responsibilities, DWR is the rightful party to execute any such agreement submitted by PG&E. Pursuant to the conditions established by the Operating Agreement and related Commission decisions, DWR does not make the decision whether to approve any such contracts, including those involving the gas storage proposal.

However, under the terms of Operating Agreement, DWR can place restrictions on PG&E’s ability to negotiate for storage capacity or reject portions of the Gas Supply Plan it finds objectionable. Unless PG&E’s ability to negotiate for the storage proposal is impinged by DWR in the manner just described, PG&E shall expect DWR to execute storage agreements submitted to the department in accordance with its approved Gas Supply Plan. We will maintain our position to approve PG&E’s gas storage proposal following review of the RFO results since this proposal emanated from our directive in Resolution E-3825. With regard to concerns about regulatory delays, we note that the draft resolution provided for an expedited approval process for the storage proposal via a letter issued by the ED. We have modified the draft resolution to reflect this discussion.

Issue 2: Conditions for the gas storage proposal RFO.

PG&E provides these suggested RFO conditions: a) provide the proposed RFO package to its PRG; b) issue the RFO to all in-state storage providers with prospective bidders given at least 21 days to provide a response; c) the EFM will administer the RFO in confidence until presented to its PRG, DWR and designated Commission personnel; d) notify prospective bidders that bids received are binding; and e) submit the results of the RFO confidentially to the Director of the Commission’s Energy Division.

Response:

We do not object to PG&E's proposed conditions, however, at the completion of the RFO, PG&E shall provide the results of the RFO to its PRG, Commission and DWR complete with its recommendations. For Commission staff, results of the RFO should be provided to the attention of the Director of the Commission's Energy Division. The draft resolution has been so modified.

Issue 3: Specificity of Future Gas Supply Plans and the Availability of Information.

PG&E states that it is willing to increase the level of specificity in future Gas Supply Plans and proposes to discuss with ED the acceptable level of detail which should be provided prior to filing its next Gas Supply Plan. The utility is open to providing information to Commission staff upon request.

Response:

Gas Supply Plans should provide sufficient information to enable the Commission, DWR and others to comprehend and understand how the utility will perform any analyses necessary to fulfill its duties. As such, we will continue to instruct PG&E to provide the discussion concerning the risk management issue raised in the draft resolution.

Issue 4: Negotiations between PPM and DWR.

PG&E notes that it is not involved in the negotiations concerning the PPM Energy contract and unable to influence any resulting agreement. Therefore, the utility will assess the impact of the completed negotiations upon DWR's notification of the outcome.

Response:

We find PG&E's assessment of this situation plausible.

Issue 5: Future Gas Supply Plan approval process.

PG&E strongly supports the streamlined approval process specified in the draft resolution and also advocates extending the term of the Gas Supply Plans to one year. The one year cycle is purported to be appropriate since it matches the term of the utility's short-term electric procurement plan.

**Response:**

We will enact the draft resolution's Gas Supply Plan approval process since PG&E, and DWR as discussed below, did not find it objectionable. We also note that PG&E raises a novel idea in its comments possibly deserving greater attention by suggesting that the terms of the Gas Supply Plans be extended for a one year period. Although the utility provides some justification for the proposal, we find that altering the current semi-annual filing requirement is not proper in this resolution. Since the semi-annual filing directive pursuant to the Operating Agreement is specified in D. 03-04-029, consideration of any changes is best addressed through a petition for modification of that decision.

**DWR reply comments.**

DWR issued a memorandum addressing draft resolutions E-3845 and E-3854 (concerning SDG&E's pending Gas Supply Plan). For PG&E's Gas Supply Plan draft resolution, DWR endorses the proposed streamlined approval process although requests that the Commission provide DWR notice of cases where ED finds a Gas Supply Plan acceptable. Additionally, DWR disagrees with PG&E's suggestion to extend the duration of the Gas Supply Plans to a year by arguing that ever-changing market conditions and the evolving nature of DWR's gas portfolio are better suited to the current semi-annual filing cycle.

In response, we will adhere to DWR's request concerning Gas Supply Plan approval notification. As noted above, examining the duration of future Gas Supply Plans should be taken up in another forum.

**FINDINGS**

1. PG&E filed AL 2410-E requesting approval of its Gas Supply Plan 2 for DWR contract gas tolling provisions for the period of October 1, 2003 through March 31, 2004.
2. PG&E is subject to the Operating Agreement adopted in D. 03-04-029.
3. D. 02-09-053 established an annual review of the reasonableness of the utilities' administration of DWR contracts.

4. D. 02-09-053 ordered PG&E to administer several DWR contracts, some of which contain gas tolling provisions.
5. D. 02-10-062 established minimum standards of behavior governing the utilities' administration of their generation resource portfolio, which includes DWR contracts.
6. PG&E should observe the standards of behavior adopted in D.02-10-062 as modified by D.02-12-074 in the course of administering DWR contracts with gas tolling provisions.
7. PG&E should observe all requirements specified in their approved short term generation procurement plans filed in R. 01-10-024 in the course of administering DWR contracts with gas tolling provisions.

**THEREFORE IT IS ORDERED THAT:**

1. PG&E AL 2410-E and the utility's Gas Supply Plan 2 is approved as modified as follows:
  - a) gas price protection for the summer of 2004 will be considered as a possible use for the utility's gas storage proposal in addition to the other reasons provided in its filed Gas Supply Plan 2.
  - b) the gas storage proposal is subject to Commission approval.

PG&E's Gas Supply Plan 2 as modified is effective beginning on the effective date of this resolution through March 31, 2004 or until its next Gas Supply Plan is approved by the Commission. The Gas Supply Plan adopted herein supercedes PG&E's Gas Supply Plan approved in Resolution E-3825.

2. PG&E is instructed to modify its Gas Supply Plan 2 to incorporate the two changes presented in Ordering Paragraph 1 through a supplemental advice letter to be filed no later than 10 days from the effective date of this resolution subject to Energy Division review and approval.
3. PG&E shall manage the gas storage proposal RFO described in Gas Supply Plan 2 under these guidelines:

a) The RFO shall be issued to all in-state gas storage providers with prospective bidders given sufficient time to prepare a response, in no event less than 21 days;

b) PG&E's EFM group shall administer the RFO and hold all bids received in confidence and ensure that the RFO results are not revealed to utility personnel or other individuals which may be involved either directly or indirectly in preparing PG&E's response until presented to its PRG, DWR and Director of the Commission's Energy Division, complete with recommendations;

c) PG&E shall notify all prospective bidders that that any bids received are binding.

PG&E shall provide the proposed RFO package to its PRG.

In the event its PRG is disbanded, the utility shall provide the required information to the Director of the Commission's Energy Division, DWR, ORA and any other party the utility believes is appropriate.

4. PG&E shall file its next Gas Supply Plan no later than February 1, 2004 for the period of April 1, 2004 through September 30, 2004.
5. PG&E shall provide a draft of its next Gas Supply Plan to its PRG (or ED staff, DWR, ORA and any other party the utility believes is appropriate in the event its PRG is disbanded) and DWR no later than two weeks prior to filing it with the Commission. In its next Gas Supply Plan the utility is directed to continue to provide detailed information concerning its analyses used in its decision making processes. In particular, the utility shall provide a thorough discussion concerning the analytical tools and resources it uses to assess future gas market price volatility in connection with its risk management strategies.
6. Future PG&E Gas Supply Plans will be subject to the review process discussed in the resolution.

7. PG&E shall observe the standards of behavior adopted in D. 02-10-062, as modified by D. 02-12-074, in the course of administering DWR contracts with gas tolling provisions.
8. PG&E shall observe all requirements specified in their approved short term generation procurement plans filed in R. 01-10-024 in the course of administering DWR contracts with gas tolling provisions.
9. PG&E shall notify its PRG (or ED staff, DWR, ORA and any other party the utility believes is appropriate in the event its PRG is disbanded) and DWR upon its determination that results from negotiations involving the PPM Energy contract may or will materially impact the Gas Supply Plan approved herein.
10. PG&E shall make available all pertinent information (e.g., prices, quantities, etc.) and supporting documentation concerning transactions as well as analyses, forecasts and related data used for decision making purposes pursuant to its approved Gas Supply Plans to Commission staff upon request.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 13, 2003; the following Commissioners voting favorably thereon:

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WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
SUSAN P. KENNEDY  
Commissioners

Commissioner Geoffrey F. Brown  
being necessarily absent did not  
participate.